

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALICE WILSON,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, DEPUTY INSPECTOR JOHN ESSIG,
POLICE OFFICER DEVINE, POLICE OFFICER
SHULTZ, POLICE OFFICER RACE, POLICE
OFFICER FESLER, POLICE OFFICER ASMAN, and
POLICE OFFICER THOMAS GIRANDO,

**DEFENDANT CITY OF NEW
YORK, NEW YORK CITY
POLICE DEPARTMENT, ASMAN
AND GIRONDA'S STATEMENT
OF UNDISPUTED FACTS
PURSUANT TO LOCAL CIVIL
RULE 56.1**

CV 04-1906 (NG)(VVP)

Defendants.

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Defendants City of New York, New York City Police Department, Rebecca Asman, and Thomas Gironda submit this statement pursuant to Local Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, to set forth the material facts as to which they contend there is no genuine issue to be tried:

1. On April 29, 2002, New York City Police Officers entered plaintiff's home, located at 1837-37 Hilburn Ave, Hollis Queens, New York. Complaint ¶¶16-17, annexed to the Declaration of Michael Chestnov (hereinafter "Chestnov Decl.") at Exhibit "A".

2. Plaintiff alleges that the officers entered her home without a warrant. Exhibit A at ¶ 18.

3. A Court of competent jurisdiction found that the officers entered plaintiff's home pursuant to a valid search warrant. Alice Wilson v. City of New York, Docket No. 1519-03, Supreme Court, Queens County, February 10, 2004, at 5, annexed to the Chestnov Decl., at Exhibit "B".

4. Plaintiff further alleges that she was handcuffed while the police searched her home. Exhibit A at ¶ 26.

5. A Court of competent jurisdiction found that plaintiff was not arrested. Exhibit B at 5.

6. On or about January 21, 2003, plaintiff filed a complaint in New York Supreme Court, Queens County, under Docket Number 1519-03 against the City of New York and unidentified New York City Police Officers. Plaintiff's State Court Complaint, annexed to the Chestnov Decl. at Exhibit "C".

7. In this state court complaint, plaintiff brought claims against the City and unidentified Police Officers for false arrest/false imprisonment; negligent hiring and retention; and violation of plaintiff's constitutional rights as a result of the allegedly unconstitutional search of plaintiff's home on April 29, 2002. Exhibit C; see Exhibit B at 2.

8. The parties commenced with discovery in the state court action, which included the taking of depositions. See Exhibit B at 6.

9. Plaintiff then moved for an Order pursuant to N.Y. C.P.L.R. § 1024 to amend the caption to add the names of the individual officers and also moved pursuant to N.Y. C.P.L.R. § 3025(b) for leave to amend the body of the complaint. See Exhibit B.

10. Plaintiff's application sought to add eight individual defendants to the caption of the state court case, including all seven of the individually named defendants in the instant action. See Plaintiff's Affirmation in Support of Motion, dated October 20, 2003, at ¶ 9, annexed to that Chestnov Decl. at Exhibit "D".

11. Defendants cross-moved to dismiss the complaint pursuant to N.Y. C.P.L.R. § 3211(a)(7), or, in the alternative, for summary judgment pursuant to N.Y. C.P.L.R. § 3212. See Exhibit B at 1.

12. On April 23, 2004, the Court denied plaintiff's applications to amend the complaint and add parties to the caption and granted defendants' cross-motion, thereby dismissing the case. Exhibit B.

13. The Court did not explicitly specify whether the dismissal was pursuant to N.Y. C.P.L.R. § 3211(a)(7) or § 3212. See Exhibit B.

14. On or about May 7, 2004, plaintiff commenced the instant action alleging a deprivation of her constitutional rights as a result of the aforementioned search and seizure by New York City Police Officers on April 29, 2002. Exhibit A.

15. Specifically, plaintiff has made allegations of false arrest and imprisonment, illegal search and seizure, as well as claiming that the City of New York has a policy and practice of improperly relying on information provided by confidential informants. See Exhibit A.

16. The instant complaint could also be construed to include state law claims for false arrest and imprisonment, illegal search and seizure, as well as negligent hiring and retention. Id.

Dated: New York, New York
August 12, 2004

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
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100 Church Street, Room 3-206
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By: _____
Michael Chestnov (MC 0443)
Assistant Corporation Counsel
Special Federal Litigation Division

To: William T. Martin, Esq.
Attorney for Plaintiff
32 Court St., Suite 707
Brooklyn, NY 11201 (Via First Class Mail)

DECLARATION OF SERVICE BY MAIL

I, MICHAEL CHESTNOV, declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that on August 12, 2004, I served the annexed RULE 56.1 STATEMENT upon the following counsel of record by depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said counsel of record at the address set forth below, being the address designated by plaintiff for that purpose:

William T. Martin, Esq.
32 Court St., Suite 707
Brooklyn, NY 11201

Dated: New York, New York
August 12, 2004

MICHAEL CHESTNOV
ASSISTANT CORPORATION COUNSEL

Index No. CV 04-1906 (NG)(VVP)

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Defendants.

**STATEMENT MADE PURUSANT TO LOCAL CIVIL
RULE 56.1**

MICHAEL A. CARDOZO

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New York, New York 10007*

*Of Counsel: Michael Chestnov
Tel: (212) 788-0991
NYCLIS No.*

Due and timely service is hereby admitted.

New York, N.Y., 200 ..

..... Esq.

Attorney for